IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Special Appeal No. 74 of 2005
&
Writ Petition No. 1242 of 2005 (M/S)

Date of decision: 26th June, 2006

A.F.R. (Approved for Reporting)
~~Not Approved for Reporting~~

Date 26.6.2006. Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is up before the judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Special Appeal No. 74 of 2005

Pramod Kumar S/o Shadi Ram,
Village Hakimpur Turra, Tehsil Roorkee,
District Haridwar, Uttaranchal. …… Appellant

Versus

1. State of Uttaranchal through Secretary,
   Department of Panchayati Raj, Dehradun.
2. State Election Commission of Uttaranchal,
   B-1, Street No. 1, Shastri Nagar,
   Haridwar Road, Dehradun,
   Uttaranchal.
3. District Election Officer/ District Magistrate,
   District Haridwar, Uttaranchal.
4. Returning Officer,
   Block Bhagwanpur, Tehsil Roorkee,
   District Haridwar, Uttaranchal.
5. Sahayak Nirvachan Adhikari,
   Block Bhagwanpur, Tehsil Roorkee,
   District Haridwar, Uttaranchal.
6. Anwar S/o Sri Hasim,
   R/o Hakimpur Turra, Tehsil Roorkee,
   District Haridwar, Uttaranchal.
7. Isam S/o Molkah,
   R/o Hakimpur Turra, Tehsil Roorkee,
   District Haridwar, Uttaranchal.
8. Chandra Pal S/o Sri Balwant,
   R/o Hakimpur Turra, Tehsil Roorkee,
   District Haridwar, Uttaranchal.
9. Babita W/o Sri Jasweer,
   R/o Hakimpur Turra, Tehsil Roorkee,
   District Haridwar, Uttaranchal.
10. Meer Alam S/o Sri Baser,
    R/o Hakimpur Turra, Tehsil Roorkee,
    District Haridwar, Uttaranchal.
11. Raj Kumar Saini S/o Sri Kabul Singh
    R/o Hakimpur Turra, Tehsil Roorkee,
    District Haridwar, Uttaranchal.
12. Vahab S/o Mahboob,
    R/o Hakimpur Turra, Tehsil Roorkee,
    District Haridwar, Uttaranchal.
13. Subhash S/o Sri Parma,
    R/o Hakimpur Turra, Tehsil Roorkee,
    District Haridwar, Uttaranchal.
14. Sharafat S/o Mohd. Hassan,
    R/o Hakimpur Turra, Tehsil Roorkee,
    District Haridwar, Uttaranchal.

Mr. C.K. Sharma, Advocate for the appellant.
Mr. U.P.S. Negi, Addl. Advocate General for respondents Nos. 1, 3, 4 and 5.
Mr. Arvind Vashishth, Advocate for respondent No. 2 State Election Commission of Uttaranchal.
Mr. Lok Pal Singh, Advocate for respondent No. 6.
None for respondents Nos. 7 to 14.

And

Writ Petition No. 1242 of 2005 (M/S)

Anwar S/o Sri Hasim,
R/o Hakimpur Turra, Block Bhagawanpur,
District Haridwar. ….. Petitioner

Versus

1. State of Uttaranchal through Secretary,
   Panchayati Raj, Secretariat Dehradun,. Uttaranchal.
2. State Election Commission of Uttaranchal,
   B-1, Street No. 1, Shastri Nagar,
   Haridwar Road, Dehradun,
   Uttaranchal.
3. District Election Officer / District Magistrate,
   District Haridwar.
4. Returning Officer,
   Block Bhagwanpur, Tehsil Roorkee,
   District Haridwar.
5. Sahayak Nirvachan Adhikar,
   Block Bhagwanpur, District Haridwar.
6. Pramod S/o Shadi Ram,
   R/o Hakimpur Turra, Block Bhagwanpur,
   District Haridwar.
7. Isam S/o Molakh,
   R/o Hakimpur Turra, Block Bhagwanpur,
   District Haridwar.
8. Chandra Pal S/o Sri Balwant,
   R/o Hakimpur Turra, Block Bhagwanpur,
   District Haridwar.
9. Pramod S/o Shadi Ram,
   R/o Hakimpur Turra, Block Bhagwanpur,
   District Haridwar.
10. Babita W/o Sri Jasweer,
    R/o Hakimpur Turra, Block Bhagwanpur,
    District Haridwar.
11. Meer Alam S/o Sri Baser,
    R/o Hakimpur Turra, Block Bhagwanpur,
    District Haridwar.
12. Raj Kumar Saini S/o Sri Kabul Singh,
    R/o Hakimpur Turra, Block Bhagwanpur.
    District Haridwar.

13. Wahab S/o Mahboob,
R/o Hakimpur Turra, Block Bhagwanpur,
District Haridwar.
14. Subhash S/o Sri Parma,
R/o Hakimpur Tyrra, Block Bhagwanpur,
District Haridwar.
15. Sharafat S/o Mohd. Hassan,
R/o Hakimpur Turra, Block Bhagwanpur,
District Haridwar. …….. Respondents

Mr. Lok Pal Singh, Advocate for the petitioner.
Mr. U.P.S. Negi, Addl. Advocate General for respondents Nos. 1, 3, 4 and 5.
Mr. Arvind Vashishth, Advocate for respondent No. 2 State Election Commission of Uttaranchal.
Mr. C.K. Sharma, Advocate for respondent No. 6.
None for respondents Nos. 7 to 15.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla C. Pant, J.

RAJEEV GUPTA, C. J. (Oral)

Mr. C.K. Sharma, Advocate for the appellant.

Mr. U.P.S. Negi, Addl. Advocate General for respondents Nos. 1, 3, 4 and 5.

Mr. Arvind Vashishth, Advocate for respondent No. 2 State Election commission of Uttaranchal.

Mr. Lok Pal Singh, Advocate for respondent No. 6.

None for respondents Nos. 7 to 14.

They are heard.

2. This judgment shall govern the disposal of Writ Petition No. 1242 of 2005 (M/S) also, which was withdrawn for hearing vide order dated 19.11.2005.

3. Appellant Pramod Kumar has filed this special appeal against the impugned interim order dated 26.10.2005 passed by learned Single Judge in Writ Petition No. 1242 of 2005 (M/S), whereby respondent No. 6 Anwar (writ petitioner) was permitted to function as Village Pradhan of Village Hakimpur Turra, Block Bhagwanpur,

Tehsil Roorkee, District Haridwar in view of the certificate issued to him, which is contained in Annexure No. 1 of the writ petition.

4. While admitting the special appeal for hearing vide order dated 11.11.2005, the operation of the impugned interim order dated 26.10.2005 was stayed and it was directed that until further orders from this Court, neither appellant Pramod Kumar nor sixth respondent Anwar (writ petitioner) shall function as Pradhan of Village Hakimpur Turra, District Haridwar. The above order was modified vide order dated 19.11.2005 and appellant Pramod Kumar was permitted to function as Pradhan of Village Panchayat Hakimpur Turra, District Haridwar until further orders and subject to the final decision in this special appeal.

5. Sixth respondent Anwar (writ petitioner) filed the writ petition for the following reliefs:

> "a) Issue a writ, order or direction in the nature of mandamus commanding the Respondent No. 1 to 5 to give the charge of Village Pradhan of Village Hakimpur Turra, Block Bhagwanpur, Tehsil Roorkee, District Haridwar to the present Petitioner as he was declared the Village Pradhan under rule 109 of the "Uttar Pradesh Panchayat Raj (Election of members, Pradhans and Uppradhans) Rules 1994.
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> b) Issue a writ, order or direction in the nature of mandamus commanding / directing Respondent No. 1 to 5 not to give the charge of Village Pradhan of Village Hakimpur Turra, Block Bhagwanpur, Tehsil Roorkee, District Haridwar to Respondent No. 6.
>
> c) Issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case, be passed in favour of the petitioner."

6. The dispute relates to the election of Village Pradhan of Village Hakimpur Turra, Block Bhagwanpur, Tehsil Roorkee, District Haridwar.

7. The writ petitioner claimed that having secured 382 votes, the highest in favour of any of the candidates in the election, he was declared elected vide Annexure No. 1 of the writ petition. The petitioner, further, alleged that respondents Nos. 1 to 5 have illegally permitted respondent No. 6 Pramod Kumar in the writ petition (appellant in the special appeal) to function as Village Pradhan.

8. Respondent No. 6 Pramod Kumar (appellant in the special appeal) on the other hand pleaded that he secured 376 votes and the writ petitioner secured only 372 votes and as such he (Pramod Kumar) was declared elected vide Annexure No. 2 of the special appeal.

9. On a perusal of Annexure No. 1 filed in the writ petition, we gather that, apart from other candidates in the election, writ petitioner Anwar secured 382 votes, appellant Pramod Kumar in the special appeal secured 376 votes and one Wahab secured 181 votes. As per the document Annexure No. 1 filed along with the counter affidavit on behalf of respondent No. 4 Returning Officer, Block Bhagwanpur, Tehsil Roorkee, District Haridwar in the special appeal, writ petitioner Anwar secured only 372 votes, appellant Pramod Kumar secured 376 votes and Wahab secured 191 votes. Thus, so far appellant Pramod Kumar is concerned, there is no dispute that he secured 376 votes in the election. The only dispute is in regard to the votes secured by writ petitioner Anwar and Wahab. According to the certified (Annexure No. 1) relief upon by writ petitioner Anwar, he secured 382 votes and Abdul Wahab secured 181 votes, whereas according to the certificate (Annexure No. 1) filed along with the counter affidavit of the Returning Officer in the special appeal, writ petitioner Anwar secured 372 votes and Wahab secured 191 votes. Both the certificates purport to have been issued by the same authority i.e. Assistant Election Officer of Block Bhagwanpur, District Haridwar. Faced with this unusual and exceptional situation, we found it necessary to peruse and examine the ballot papers ourselves for ascertaining as to whether writ petitioner Anwar and the other candidate Wahab secured 382 and 181

votes respectively as was certified vide Annexure No. 1 filed in the writ petition or they secured 372 and 191 votes respectively as has been certified in Annexure No. 1 filed along with the counter affidavit of the Returning Officer.

10. In compliance of our order dated 14.06.2006 passed in Writ Petition no. 1242 of 2005 (M/S), second respondent State Election Commission of Uttaranchal has produced the ballot papers in a sealed box, which was opened in our presence on our direction.

11. On a scrutiny of the ballot papers kept in the box, we found that writ petitioner Anwar has secured 46 votes in booth No. 92; 55 votes in booth No. 93 and 271 votes in booth No. 94. Thus, writ petitioner Anwar secured, in all, 372 votes. The other candidate Wahab secured 56 votes in booth No. 92; 53 votes in booth No. 93 and 82 votes in booth No. 94. Thus, the total number of votes in his favour comes to 191 and not 181 as shown in certificate (Annexure No.1) filed along with the writ petition.

12. Thus, it is apparent that writ petitioner Anwar could secure only 372 votes i.e. less than the votes secured by appellant Pramod Kumar in the special appeal, which is 376. As petitioner Anwar did not secure highest votes in the election, we do not find any substance in his claim in the writ petition, which was based on certificate (Annexure No. 1), genuineness whereof has been seriously disputed by all the respondents.

13. In this view of the matter, the reliefs sought by the writ petitioner cannot legally be granted. The writ petition, therefore, is liable to be dismissed and is hereby dismissed.

14. Consequently, the interim order dated 26.10.2005 passed by the learned Single Judge assuming the contents of certificate (Annexure

No. 1) to be correct, too, is liable to be set aside and is, hereby, set aside and the special appeal is allowed.

15. It goes without saying that appropriate action shall be initiated against the person / persons found guilty for fabricating the forged document Annexure No. 1 filed along with the writ petition expeditiously in accordance with law.

(Prafulla C. Pant, J.) 26.06.2006

(Rajeev Gupta, C. J.) 26.06.2006

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